

REMARKS

Applicant appreciatively acknowledges the Examiner's statement regarding the patentability of Claims 3-8 if rewritten or amended to overcome the rejection under 35 U.S.C. §112, second paragraph. These rejections and others described in the Office Action mailed 4 May 2004 are addressed below. Applicant submits that, with this Amendment, the pending claims are now in condition for allowance.

**Claim Amendments**

Prior to this Amendment, Claims 1-19 were pending. Claims 1-2 and 11-15 are hereby withdrawn from consideration. Claims 3-10 and 16-19 have been amended as shown above. Specifically, the preambles of Claims 4-8, 10, and 16-18 have been amended to correct informalities with regards to the use of the word "invention" in these dependent claims. Applicant submits that no new matter has been added with this Amendment.

**Election/Restriction Requirement**

Applicant hereby acknowledges the election of the invention of Figure 2 (Claims 3-10 and 16-19 made during a telephone conversation with Examiner Young Tse on 23 April 2004. Claims 1-2 and 11-15 are listed in their entirety and designated as "Withdrawn" in the "Listing of Claims" attached above as required by 37 C.F.R. §1.121(c).

**Objections to the Claims**

Claims 4-8, 10, and 16-19 have been objected to because of various formalities. As requested by the Examiner, Claims 4-8 have been amended to replace "- invention -" with "- method -" and Claim 10 has been amended to replace "- invention -" with "- system -". Claim 4 has been amended to insert a comma between "devices" and "wherein" and Claims 16-18 have been amended to replace "- invention of claims 9, 11, 12, 13, 14, or 15 -" with "- system of Claim 9 -". Claim 17 has been amended to insert "a" before "- coaxial cable -".

Applicant submits that the objections to Claim 19 are rendered moot by this amendment. Claim 19 has been amended such that the preamble is consistent with the body of the claim. Applicant respectfully submits that the objections should be withdrawn in light of this amendment.

**Claim Rejections under 35 U.S.C. §112, second paragraph**

Claims 3-10 and 16-18 have been rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

As originally presented, Claims 3 and 9 each recite “– oversubscribing a DSL modem –” in the preamble and “– M DSL modems –” in the body of the claim. Claims 4-8 depend from Claim 3 and Claims 10 and 16-18 depend from Claim 9. Independent Claims 3 and 9 have been amended as shown above to clarify the claimed subject matter. Specifically, “– oversubscribing a DSL modem –” has been changed to “– oversubscribing a group of M DSL modems –”. Applicant submits that the rejection of Claim 10 under 35 U.S.C. §112, second paragraph is rendered moot by the clarifying amendments to Claim 9.

Applicant submits that this amendment does not constitute new matter and that the pending rejections under 35 U.S.C. §112, second paragraph should be withdrawn.

**Claim Rejections under 35 U.S.C. 102(b)**

Claims 9-10 and 16-17 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,676,846 to Busch (“Busch”).

Busch discloses a system comprising a peripheral computer that interfaces with one or more low speed data sources over a communication circuit. The peripheral computer temporarily stores incoming data and arrange it into strings of data blocks that are transmitted at a higher rate over a communication circuit to a central computer. Busch neither discloses nor suggests a system whereby user traffic data is transmitted over a downstream data link between a Customer Premise Equipment device and one of a group of DSL modems while synchronization data is transferred over a downstream data link between a Customer Premise Equipment device and an OAM/EOC modem.

Based on the amendments to Claim 9 shown above in the “Listing of Claims,” Applicant traverses this rejection. For a proper rejection under 35 U.S.C. §102(b), a cited reference must disclose each and every limitation of the rejected claim. As noted above, Busch does not disclose a system wherein data transfers between a Customer Premise Equipment (CPE) device and an upstream data link are managed by switching the communication over a downstream data

link to the CPE device between one of a group DSL modems and one of a group of OAM/EOC modems. Furthermore, Busch neither discloses nor suggests a system wherein synchronization data is transferred between the CPE device and one of a group of OAM/EOC modems while user traffic data is transferred between the CPE device and one of a group of DSL modems. As such, Busch does not disclose all of the limitations recited in Claim 9. Applicant therefore respectfully submits that the pending rejection of Claim 9 under 35 U.S.C. §102(b) should be withdrawn. Claims 10 and 16-18 depend from and therefore include all of the limitations of Claim 9. As such, they are also in condition for allowance.

**Provisional Obviousness-Type Double Patenting Claim Rejections**

Claims 3-4, 8-10, and 19 of the instant application have been provisionally rejected over Claims 1-2, 4-6, 14, and 35 of co-pending Application Serial No. 10/159,496. Applicant acknowledges this rejection but defers action on this rejection pending patenting of the cited claims. Applicant will execute and file a terminal disclaimer as necessary to secure allowance of the claims in the instant application and/or co-pending Application Serial No. 10/159,496.

The Examiner is invited to call the undersigned at the number provided if any issues arising in connection with the above-referenced application may be dispensed of by telephone conference. In the event any variance exists between the amount enclosed and the Patent Office charges, please charge or credit any difference to the undersigned's Deposit Account No. 50-2559.

Respectfully submitted,

Dated: 12 January 2005

**Customer Number: 39368**

Skymoon Research and Development  
3045 Park Boulevard  
Palo Alto, CA 94306  
(650) 475-1605 (telephone)  
(650) 688-3119 (facsimile)

By: 

Michael D. Van Loy

Registration No. 52,315